



## **UNIVERSITY OF HOUSTON INNOCENCE PROJECT OCA ANNUAL REPORT FOR FY 2013: PROJECT NARRATIVE**

The University of Houston Innocence Project (UHIP), directed by Professor David R. Dow, operates in conjunction with the Texas Innocence Network to assist prisoners who are wrongly-convicted. Its Non-Capital (*i.e.*, non-death penalty) Division evaluates and investigates claims of actual innocence made by incarcerated inmates whose direct appeals have been finalized. If evidence of actual innocence is established, UHIP assists wrongly-convicted inmates obtain post-conviction relief by filing petitions for writ of habeas corpus, clemency applications, or both.

University of Houston Law Center (UHLC) students are integral to the success of UHIP. Students enroll in a semester-long Innocence Investigations class taught by Professor David R. Dow and Adjunct Professor Cassandra Jeu. UHLC offers Innocence Investigations during the Fall, Spring, and Summer semesters. Like all clinics at UHLC, the Innocence Investigations class contains a substantive and practical component.

During the substantive portion of the course, UHLC students learn how to perform fact-based investigations and how to seek post-conviction relief based on actual innocence. To further these objectives, students study Texas criminal cases, statutes related to post-conviction relief, and criminal procedure on both the state and federal levels. Specific investigation skills learned include: reconstructing crime scenes, conducting witness/inmate interviews, locating witnesses, obtaining and reviewing records and physical evidence, and understanding and interpreting evidence (*e.g.*, autopsy/police/DNA reports). In addition, students are taught how to draft legal documents related to criminal appellate work, such as: Chapter 64 motions, state habeas petitions, federal habeas petitions, and applications for clemency. Finally, students identify the causes of wrongful convictions (*e.g.*, eyewitness misidentification, junk science, false confessions, etc.) and the policy reforms that could assist in minimizing them.

By studying the causes of wrongful convictions and the ways to avoid them, law students who plan on practicing criminal law learn best-practices to avoid wrongful convictions throughout their careers. Law students who plan to practice other types of law gain important knowledge about the legal system, which may lead to future criminal justice reforms. Regardless of whether students eventually practice criminal law, they come away from Innocence Investigations with increased empathy for all actors in the criminal justice system, increased practical knowledge with respect criminal investigation and law, and increased desire to both avoid wrongful convictions and correct them when they occur.



During the practical component of the course, UHLC students utilize their skills and knowledge by evaluating and investigating claims of actual innocence. UHIP assesses correspondence received by inmates and their agents in order to determine whether an actual innocence claim that fits within project parameters has been presented. UHIP does not accept cases where (1) the inmate has fully discharged his sentence, even if the crime is later used to enhance sentencing in an unrelated crime; (2) the innocence claim is related to the reason an inmate's probation/parole has been revoked; or (3) another innocence project is working on the inmate's case. UHIP accepts cases where an inmate has pled guilty/nolo contendere on a limited basis only. In these cases, an inmate's innocence claim must contain physical evidence and/or a victim recantation. UHIP investigates cases involving DNA evidence, as well as cases where there is no DNA evidence. If an inmate falls within UHIP parameters, he/she is sent a questionnaire requesting additional information regarding the innocence claim. An inmate may bypass this step by sending in a Texas Prisoners' Innocence Questionnaire (TPIQ) directly to UHIP. Inmates may find copies of the TPIQ, a form questionnaire approved by all four Texas innocence projects, in their prison library.

Once a questionnaire is returned, UHIP staff and UHLC students review an inmate's case file and evaluate the viability of the underlying innocence claim. This process requires UHLC students to understand the statutory basis of the crime for which the inmate was convicted, as well as the evidence presented at trial by both the State and the defense. Students then determine whether an inmate is claiming actual, rather than legal, innocence; and, if so, whether proposed new evidence would tend to show that the inmate did not commit the crime for which he/she was convicted. If proposed new evidence would indicate that the inmate was wrongfully convicted, the case is passed to investigation. UHIP's staff attorney oversees all aspects of student screening to ensure that all viable innocence claims are being investigated. When needed, she also screens cases to avoid potential backlogs at the screening stage.

Once a case has been passed to investigation, UHLC students investigate inmates' actual innocence claim in order to obtain the evidence that would indicate that the inmate was wrongfully convicted. Attorneys direct and oversee this student work, which may include: record collection, evaluating police/lab/autopsy reports, researching related medical/scientific claims (*e.g.* – shaken baby syndrome), interviewing witnesses, etc.



After exonerating evidence is secured, UHIP staff and UHLC students assist wrongfully inmates in obtaining post-conviction relief through habeas proceedings, the clemency process, or both. UHIP seeks post-conviction relief only in cases containing persuasive evidence of actual innocence that can meet the standards set by the judiciary and/or Texas Board of Pardons and Paroles.

OCA funding is vital to the existence of UHIP. OCA contract funds are being used by UHIP to enhance the services provided to indigent defendants, as well as the speed with which assistance is provided. Since its inception, UHIP has received an average of approximately 1,000 requests for assistance each year. OCA funding has allowed UHIP to quickly respond to over 9,000 of these requests—nearly half of which contained claims of actual innocence.

In the past fiscal year, UHIP utilized OCA contract funds to enhance the services provided to indigent defendants, as well as the speed with which assistance is provided. OCA funds reimbursed expenses directly related to the investigation of non-capital inmates' claims of actual innocence. OCA funds also were used to fund a full-time attorney to operate UHIP on a daily basis; oversee and perform non-capital investigations; and provide direct legal assistance. Investigative and administrative support staff are hired on a contractual, as-needed basis. By minimizing its staffing needs, UHIP maximizes the funds available towards direct investigative expenses.

UHIP began in March 2000, with four student volunteers and a shoestring budget. Prior to receiving OCA funding, UHIP was staffed by one full-time investigator and one part-time administrative assistant. Professor David R. Dow provided funding for investigations through his own limited stipends, foregoing conferences and other academic-related items in order to assist the wrongfully convicted. Due to insufficient resources, UHIP could not afford to hire a staff attorney. UHIP's case backlog also prevented it from reviewing inmate mail immediately upon its receipt. There was an approximate two-month lag between the time a letter was received and the time it was read/processed by UHIP staff. Once inmate questionnaires were received, there was an approximate six-month waiting period before UHLC law students could review case files and discuss their recommendations with Professor David R. Dow, the only licensed attorney associated with UHIP.



Prior to obtaining OCA funding, UHIP could not provide many wrongfully convicted inmates with post-conviction legal assistance. UHLC students investigated numerous claims of actual innocence and located evidence in some cases which showed the inmate had not committed the crime for which he was convicted. However, given Professor Dow's class schedule and caseload, UHIP would often have to either locate an experienced criminal appellate attorney who would be willing to accept the inmate's case *pro bono*, or turn the evidence over to the inmate with general information regarding potential avenues of post-conviction relief.

OCA funding permitted UHIP to hire a full-time attorney. Cassandra Jeu has been employed as a UHIP staff attorney since 2005 and has co-taught Innocence Investigations as a UHLC Adjunct Professor since 2007. She supervises non-capital cases and student investigations, as well as provides direct legal assistance to wrongfully convicted inmates. Ms. Jeu reviews all incoming correspondence and determines which requests contain a claim of actual innocence that fit into UHIP parameters. She evaluates inmate case files and decides which cases contain viable claims of actual innocence that should be moved to investigation. During the investigative process, she instructs and supervises UHLC law students in order to examine or substantiate inmates' claims of actual innocence. Finally, Ms. Jeu drafts and files legal documents, such as habeas writs and clemency petitions, in order to exonerate the wrongfully convicted.

OCA funding of a full-time staff attorney allowed UHIP to completely clear its backlog at the intake and screening phases. Incoming mail is read and processed immediately upon receipt. Moreover, inmate questionnaires are assigned for screening the day they are received. Under attorney supervision and review, UHLC students screen cases for pedagogical purposes. The remainder is screened by an experienced attorney to ensure that all viable claims of actual innocence move to investigation. In addition to providing vital quality control, attorney-based screening has completely cleared UHIP's six-month backlog of screener files, thereby providing heightened service to wrongfully convicted inmates. This process has the added benefit of permitting UHLC students to focus on investigating and furthering inmates' claims of actual innocence.

Most criminal cases do not contain physical evidence stored at local law enforcement agencies that can be easily accessed and tested. Rather, a wrongfully convicted inmate's innocence claim will more often rely on witnesses who must be located and interviewed. This is a lengthy and potentially costly process that is difficult to maintain without OCA support.



Prior to OCA funding, UHIP's ability to investigate claims of actual innocence was highly limited. UHIP was often unable to afford to procure case records, such as trial transcripts, thereby severely limiting the efficacy of its investigations. Cases outside the Houston area would be placed on hold until UHIP had a student whose family lived nearby. Students would schedule their investigations around their vacations, in order to save travel expenses. This resulted in many cases being placed on indefinite hold for months, or even years.

OCA funding alleviated these issues, as UHIP can now afford case records and related investigative expenses. OCA funds reimburse expenses directly related to the investigation of non-capital inmates' claims of actual innocence. UHIP can provide inmates with faster, more thorough investigations. It has also been able to expand the parameter of cases that can be passed to investigation. In conjunction with the OCA, UHIP better serves the wrongfully convicted and all shareholders in the criminal justice system.

Additionally, OCA funding permitted the expansion of UHIP at UHLC. Additional staffing led to a fuller pedagogical experience for UHLC students. A full-time UHIP staff attorney located at UHLC results in full-time student instruction and supervision. UHLC students can come into the UHIP office to discuss casework or ask questions at any time, rather than having to wait for Professor Dow's office hours or their weekly class.

In addition to providing wrongfully convicted inmates assistance in investigating and litigating their claims of actual innocence, UHIP has long-lasting effects on a future generation of attorneys. OCA funding has exponentially increased law students' education with respect to the criminal justice system, causes of wrongful conviction, and the ways to avoid them. The following is a sample of student comments with respect to Innocence Investigations and how it has affected them:

First, it was driven home how important the trial is in criminal proceedings. Of course, I have heard this before, but after working closely with case files one begins to realize that though there are extensive appellate and *habeas* procedures available to those convicted, the codified and inherent deference given to the findings of the trial court are, in many cases, virtually unassailable. Second, my image of the American criminal trial has somewhat been tarnished. I, like many, have always presumed that our justice system strives to protect the rights of the accused. And though I certainly believe it still, I have come to realize that the cards are not stacked as deferentially toward the defendant as I once thought.

– *Jonathan Smith (UHLC Class of 2013)*



I believe this case will make me a better person by making me more aware of the flaws and biases of the criminal justice system and making me more compassionate toward individuals who have been incarcerated. After reviewing several cases you start to get a feel for what evidence is actually used to convict a person at trial. Often times I agree strongly with the verdict that was reached, but other times it seems that the evidence hardly supports a conviction beyond a reasonable doubt. Often these cases involve uneducated individuals and/or racial minorities. It's a shame to think that they may have had a better opportunity to defend themselves against charges if they had a little bit more money or a different colored skin.

– *Brandon Pittard (UHLC Class of 2014)*

It was surprising how little regulation there is on keeping DNA records. Dallas County seems to be the only county that keeps its DNA records indefinitely and so has the most exonerations of any county in Texas. Many might incorrectly assume that Dallas County's criminal justice system is faulty (as it results in more exonerations), when in truth Dallas is just better at storing DNA records (and thereby proving innocence).

Beyond the lecture component, the practical application component of Innocence Investigations was rewarding and challenging. Learning the basics of screening files and investigating files required time and practice. But beyond the actual process, the most important lesson to learn in investigating claims of actual innocence is not to give up and not to become cynical of the system. Nine times out of ten, the claim an inmate has put forth has no chance at surviving and must be terminated. In the face of such staggering odds, persevering to give each claim a fair and accurate assessment is of utmost importance, as there could be one small fact or detail, or one "burr under the saddle," that could mean the exoneration of a wrongfully convicted inmate. Beyond that, even if the inmate was correctly convicted, giving them a fair chance and reviewing their file is just as rewarding and allowed me to continue screening and investigating without developing cynicism toward the system. This is the most important lesson that I will carry with me into being a better person and a better attorney.

– *Sean Mascarenhas (UHLC Class of 2014)*



[Innocence Investigations] has taught me how to think critically about what type of evidence potentially helps a person accused of a crime at any given stage of their journey through the Criminal Justice System. One of the most striking features of the System is that a piece of evidence may help a person in the early stages of their excursion through it, but the same evidence can become entirely useless once that person reaches a certain point—in many cases, once he or she has been convicted. I have also recognized that the problem of inadequate and utterly incompetent defense counsel is something that must be more satisfactorily addressed.

This course has opened my eyes to the harsh reality that although there are many guilty persons in the prison system, there are many other persons who may be innocent. I did not truly acknowledge that innocent people do go to prison until I took this class. This truth is something the common person probably concedes only in the back of their mind but never pulls to the forefront to face. For me, something changed when the prisoners took on names, faces and stories of their own. These topics, collectively, taught me that the Criminal Justice System can be extremely harsh. . . . [The] System I learned about this semester is flawed, and is a nightmare for most criminally accused.

— Brenna Lermom (*UHLC Class of 2014*)

I know from this clinic that 25% of cases in the steadily growing class of DNA exonerations involve false confessions, and 75% involve mistaken identifications. It is one thing to learn those statistics, however, and another entirely to see case after case that demonstrates that conditions are still comfortable for legal actors who prefer to ignore the reality of wrongful convictions. It is important to note what I refer to was often shown more clearly in the judicial opinions or police records, not letters from inmates.

This class will make me a better person because I had the opportunity to devote all of my time to focusing on cases and people that have often been overlooked or not taken seriously. Even if our class could not pursue a case, I was glad to seriously commit to that each week and proud that that this was a group responsibility taken very seriously. The class did not permit the belittling of anyone who asked for our help no matter who he or she was. This may be the first time I have been in such an environment.

— Jade Ortego (*UHLC Class of 2014*)



After having been introduced to the Justice System from the perspective of a potentially wrongfully convicted individual, I can confidently say that the days of innocent until proven guilty and the presumption of innocent are over. From the second he is arrested, a defendant is guilty until proven otherwise. Despite acquittal verdicts for individuals in the media's limelight such as O.J. Simpson and more recently, Casey Anthony and George Zimmerman, most individuals—innocent or not—do not walk away that easily. I was persuaded to take this class after hearing Anthony Graves speak on campus. I fought back tears the entire time. For the past five years, I have been reading about innocent people like Graves who had been incarcerated for more than a decade, finally getting out. I wanted to know why these injustices were happening and how to prevent them. These days, the media brings on many allegations. Defendants are forced to prove themselves innocent against all the resources of the state. With the motto 'win at all costs' silently humming in their ears, I believe that prosecutors will do just about anything to please the various constituencies they represent.

This class has taught me that it is nearly impossible to overturn a conviction without *new* evidence. DNA evidence is a goldmine. In a claim of newly discovered evidence, a defendant would need to show, among other things that the evidence could not have been found during the trial phase. If a judge rules that it could have been, then the judge can uphold the conviction, regardless of how compelling that evidence is. Without rambling, it is a *long* road to justice. This is especially ironic considering a simple 20-minute hearing could end 25 years of turmoil for a one-time convicted murderer. What is worse—cases that lack DNA often require unwieldy investigations, which may involve both locating and interviewing witnesses or combing through large files praying that the trial attorney missed something. Even when new evidence is brought to light, whether it is a witness recanting or exculpatory evidence withheld from the defense, judges, juries, and prosecutors are often still skeptical.

We, as a society, focus so much on building a case against the prime suspect/person of interest, even more so if they have a past criminal record, that we are impervious to their potential innocence.





Elsewhere, we are trying to correct this tunnel-vision phenomenon. Established by District Attorney Craig Watkins in July of 2007, the Conviction Integrity Unit in Dallas reviews and re-investigates legitimate post-conviction claims of innocence in accordance with the Texas Code of Criminal Procedure, Chapter 64. In addition, the Conviction Integrity Unit reviews and prosecutes old cases (DNA and non-DNA related) where evidence identifies different or additional perpetrators. This unit has the potential to do more than exonerate the innocent, it can also help prosecutors in the future.

We need to do a better job of reiterating the *fact* that *everyone*, conservative or liberal has an interest in exonerating a person convicted of an offense for which he or she is actually innocent. When an innocent person is behind bars, the actual offender remains free to strike again. Wrongful convictions have cost taxpayers millions of dollars. A significant portion of these costs accrue during the original trial and subsequent appeals, not to mention the costs to the attorney's office, public defender system, and the courts. Likewise, in Texas, wrongfully convicted individuals who are later exonerated can file a court action for damages. Plainly, no one is served when the wrong people go to jail.

Prosecutors need to not only know that they can, but also be encouraged, to come forward if they think they have the wrong person. Every proceeding should start with the prosecutor asking himself or herself, Do I have the right guy? While I am not saying that all prosecutorial errors are the result of misconduct, I think that there needs to be more professional responsibility and accountability at the District Attorney's office.

To quote Voltaire, "it is better to risk saving a guilty person than to condemn an innocent one" For me, the injustice to those not deserving of punishment weighs more heavily than the injustice caused by a lack of punishment for those who do. Young attorneys, in particular, should work with integrity and empathy. Seeking justice is not about convicting everyone suspected of a criminal act; rather, it is about convicting the guilty and freeing the innocent.



On a personal level, it has been rewarding to know that I have at least tried to help individuals who usually are in no position to help themselves, as many have no other avenues for obtaining relief. Innocence Investigations reminded me of why I wanted to come to law school in the first place and motivates me to continue with that dream. Clinics really do provide valuable experience. As a law student, I've learned more in this class about the practice of lawyering than I have in any other class to date. One of the most important thing a defense attorney (or legal advocate) can do is just take the time to listen to the defendant like the human being that they are.

– *Lauren Pitts (UHLC Class of 2014)*



**UNIVERSITY OF HOUSTON INNOCENCE PROJECT  
OCA ANNUAL REPORT FOR FY 2013: RELEVANT STATISTICS**

**PHASE I: INTAKE**

<i>Description</i>	<i>Total</i>
Incoming requests containing an claim of actual innocence	323
Incoming requests that did not contain a claim of actual innocence ( <i>e.g.</i> , law of the parties) or did not fit into project parameters ( <i>e.g.</i> , discharged sentence)	259
Letters from inmates already in the UHIP database	1,014

**PHASE II: SCREENING**

<i>Description</i>	<i>Total</i>
Cases screened following receipt of inmate questionnaire: FY 2013	271
• September 1, 2012 – November 30, 2012	157
• December 1, 2012 – February 28, 2013	64
• March 1, 2013 – May 31, 2013	28
• June 1, 2013 – August 31, 2013	22

**PHASE III: INVESTIGATION**

<i>Description</i>	<i>Total</i>
New investigations started: FY 2013	101
• September 1, 2012 – November 30, 2012	71
• December 1, 2012 – February 28, 2013	19
• March 1, 2013 – May 31, 2013	6
• June 1, 2013 – August 31, 2013	5
Investigations completed: FY 2013	159
• September 1, 2012 – November 30, 2012	0
• December 1, 2012 – February 28, 2013	28
• March 1, 2013 – May 31, 2013	50
• June 1, 2013 – August 31, 2013	81
Open investigations as of August 31, 2013	278
Cases in which litigation started: FY 2013	0
• September 1, 2012 – November 30, 2012	0
• December 1, 2012 – February 28, 2013	0
• March 1, 2013 – May 31, 2013	0
• June 1, 2013 – August 31, 2013	0
Cases in which clemency proceedings started: FY 2013	1
• September 1, 2012 – November 30, 2012	0
• December 1, 2012 – February 28, 2013	1
• March 1, 2013 – May 31, 2013	0
• June 1, 2013 – August 31, 2013	0
Convictions overturned: FY 2013	0



**UNIVERSITY OF HOUSTON INNOCENCE PROJECT  
OCA ANNUAL REPORT FOR FY 2013: RELEVANT STATISTICS – CTD.**

**STUDENT & STAFF STATISTICS**

<i>Description</i>	<i>Total</i>
Students participating in UHIP: FY 2013 *	69
• September 1, 2012 – November 30, 2012	17
• December 1, 2012 – February 28, 2013	24
• March 1, 2013 – May 31, 2013	7
• June 1, 2013 – August 31, 2013	21
Hours worked by UHIP students: FY 2013	5,480.10
• September 1, 2012 – November 30, 2012	1,761.95
• December 1, 2012 – February 28, 2013	365.25
• March 1, 2013 – May 31, 2013	1,164.15
• June 1, 2013 – August 31, 2013	2,188.75
Staff Hours (Investigative/Administrative/Paralegal): FY 2013	0
Staff Hours** (Legal): FY 2013	2,080
External Contract Staff Hours** (Investigative/Administrative/Paralegal): FY 2013	72.1
• September 1, 2012 – November 30, 2012	0
• December 1, 2012 – February 28, 2013	15.5
• March 1, 2013 – May 31, 2013	44.6
• June 1, 2013 – August 31, 2013	12
External Contract Attorney Hours**: FY 2013	520
• September 1, 2012 – November 30, 2012	130
• December 1, 2012 – February 28, 2013	130
• March 1, 2013 – May 31, 2013	130
• June 1, 2013 – August 31, 2013	130
Donated Hours (Investigative/Administrative/Paralegal)	0
Donated Hours (Legal) **	0

\* - There is an overlap between fiscal year quarters and UHLC's academic calendar. The students participating in UHIP per *semester* were: Fall 2012–17, Spring 2013–7, Summer 2013–9, Fall 2013–12.

\*\* - Please note that hours worked/donated by project director Professor David R. Dow are not reflected.